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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 09/602,034              | 06/23/2000  | Jeffry Jovan Philyaw | PHLY-25,337         | 9028             |
| 25883                   | 7590        | 02/27/2006           | EXAMINER            |                  |
| HOWISON & ARNOTT, L.L.P |             |                      | JACOBS, LASHONDA T  |                  |
| P.O. BOX 741715         |             |                      |                     |                  |
| DALLAS, TX 75374-1715   |             |                      | ART UNIT            | PAPER NUMBER     |
|                         |             |                      | 2157                |                  |

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>   |  |
|------------------------------|------------------------|-----------------------|--|
|                              | 09/602,034             | PHILYAW, JEFFRY JOVAN |  |
| Examiner                     | Art Unit               |                       |  |
| LaShonda T. Jacobs           | 2157                   |                       |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on November 21, 2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-18, 21 and 22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-18 and 21-22 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is in response to Applicant's Amendment and Request for Reconsideration filed on November 21, 2005. Claims 1, 2, 10 and 11 have been amended. Applicant newly adds claims 21 and 22. Claims 1-18 are presented for further examination. Claims 21 and 22 are also presented for examination.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner is unclear as to what is does the predetermined association with the remote location mean. Examiner will interpret this to mean anything that is related to the remote location until further clarification from the Applicant.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

*Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 1 is rejected on the ground of nonstatutory double patenting over claim 1 of U. S.

Patent No. 6,985,954 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: transferring to the user PC unique information, which unique information has no routing contained therein that would by itself uniquely identify the location of the remote location on the network, but which unique information has a predetermined association with the remote location.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1, 5-10, 14-18 and 21-22** are rejected under 35 U.S.C. 102(e) as being anticipated by Tendler U.S. Pat. No. 6,519,463.

As per claims **1** and **10**, Tendler discloses to a user PC, comprising the steps of: a method and apparatus for accessing information over a network from a remote location on the network for delivery

- providing a functional mode on a cellular telephone for web access over the network, the cellular telephone separate from the user PC (col. 4, lines 6-27);
- associating a button on the cellular phone with the functional mode (col. 5, lines 6-13);
- activating the button on the cellular phone to activate the functional mode when the user is in physical proximity to the user PC, in response thereto, transferring to the user PC unique information, which unique information has no routing information contained therein that would by itself uniquely identify the location of the remote location on the network, but which unique information has a predetermined association with the remote location (col. 5, lines 44-54); and
- in response to activation of the functional mode, the user PC then utilizes the unique information received from the cellular telephone and the predetermined association thereof with the remote location to access information from the remote location on the network for delivery to user PC and display thereof on a display associated with the user PC (col. 5, lines 55-65).

As per claims **5** and **14**, Tendler discloses:

- wherein the step of transmitting comprises transmitting via a wireless mode (col. 5, lines 44-54).

As per claims **6** and **15**, Tendler discloses:

- wherein the step of transmitting via the wireless mode includes transmitting via an optical link (col. 6, lines 41-54).

As per claims **7** and **16**, Tendler discloses:

- receiving the unique code (col. 5, lines 6-13);
- transmitting the unique code to an intermediate node on the network (col. 5, lines 6-13);
- providing a relational database at the intermediate node on the network having contained therein a relational table between one or more unique codes and corresponding location information of the network (col. 5, lines 44-54);
- comparing the unique code transmitted to the intermediate node with location that resides in the informational database and, if there is a match transmitting the matched location information back to the user PC (col. 5, lines 55-65); and
- connecting the user PC to the remote location in accordance with the matched location information returned thereto from the intermediate node (col. 5, lines 66-67 and col. 6, lines 1-4).

As per claim **8** and **17**, Tendler discloses:

- wherein the step of transmitting comprises an audio signal wherein the step of receiving comprises receiving and detecting the audio signal and extracting the information in the unique code therefrom (col. 6, lines 41-49).

As per claims **9** and **18**, Tendler disclose:

- wherein the network is a global communication network (col. 2, lines 63-66).

As per claims **21** and **22**, Tendler discloses:

- wherein the cellular telephone has a communication mode to allow voice communication where the cellular telephone communicates via a cellular telephone network and the step of transferring to the user PC the unique information occurs over a separate communication link between the user PC and the cellular telephone (col. 4, lines 6-27).

#### *Allowable Subject Matter*

7. Claims **2-4** and **11-13** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

8. Applicant's arguments filed November 21, 2005 have been fully considered but they are not persuasive.

**The Office Notes the following Arguments:**

- a. There is no disclosure that would provide code to a user PC, which code would have no routing information contained therein, i.e., in and of itself it would not identify the remote location on the network absent some association with the network.
- b. There is no user PC that is in physical proximity to the cellular telephone.

**In response to:**

(a)-(b), Tendler discloses users of wireless phones to receive information regarding physical location of different places that accommodates the user. The user is able to press a button on his/her cell phone and receive the information regarding the location being accessed. Once the user presses the button the information is transferred to a remote location (computer) and the results are sent to user wireless phone. Therefore, Tendler explicitly discloses providing code to a user PC, which code would have no routing information contained therein, i.e., in and of itself it would not identify the remote location on the network absent some association with the network and the user PC is in physical proximity to the cellular phone (col. 4, lines 6-27 and col. 5, lines 44-54).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs  
Examiner  
Art Unit 2157

ltj  
February 13, 2006



ARIO ETIENNE  
PRIMARY EXAMINER